

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE VETERANS HOMES BOARD

In the Matter of the Appeal of the  
Discharge of James Hiebeler from the  
Minnesota Veterans Home - Hastings

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on February 28, 2001 at the Minnesota Veterans Home in Hastings, Minnesota.

Appearing on behalf of the Veterans Home Board was Donald E. Notvik, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106. James L. Hiebeler appeared on his own behalf, *pro se*. He was assisted by Brad Lindsay a Veterans Assistance Coordinator with the State Department of Veterans Affairs, 206c Veterans Service Building, 20 West 12<sup>th</sup> Street, St. Paul, MN 55155.

The record closed on February 28, 2000, when the hearing ended.

**NOTICE**

This Report is a recommendation, not a final decision. The Veterans Home Board will make the final decision after a review of the record. The Board may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation. Under Minn. Stat. § 1461, the final decision of the Veterans Home Board shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact Marcy Harris, Veterans Home Board, 122 Veterans Service Building, 20 West 12<sup>th</sup> Street, St. Paul, MN 55155, (651) 297-5254, to determine how to present materials to the Board.

**STATEMENT OF ISSUE**

Should the proposed discharge of James Hiebeler from the Minnesota Veterans Home - Hastings be upheld, or reversed?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## **FINDINGS OF FACT**

1. James L. Hiebeler is approximately 55 years old. He is an honorably discharged veteran of the United States Air Force, having served during the Vietnam Conflict.

2. On August 16, 1995, Hiebeler applied for admission to the Veterans Home in Hastings. At that time, he filled out an application indicating that he had no assets or income. He was admitted to the home sometime in the fall of 1995, and has remained there to date.

3. Effective June 1, 1998, Hiebeler began to receive a disability pension from the Federal Department of Veterans Affairs. This was in the amount of \$722.00 per month at that time. He was paid a lump sum of \$2888.00 on October 26, 1998 and then \$722.00 on October 30 and December 1, 1998.

4. Beginning on January 1, 1999, Hiebeler's payments were diverted to repay an overpayment, which he had incurred at some prior time. These diversions continued until October 1, 1999, when he received a check for \$538.34, and then beginning on November 1, 1999, he received \$731.00 monthly. This was adjusted to \$749.00 effective December 1, 1999, and has now increased to \$775.00 per month. These payments are directly deposited into a Wells Fargo bank account owned and controlled by Hiebeler.

5. Hiebeler has never paid any of his maintenance charges since he has been at the Home. He was not required to pay any maintenance charges until his pension began, and then his maintenance charge was suspended while the payments were being diverted. But once the diversion ended, maintenance charges were reinstated, and continued to this date. His maintenance charges began at \$600.40 per month, and have gradually increased to the point where they are currently \$650.75 per month.

6. Hiebeler's failure to pay has resulted in a substantial balance due to the Home. As of January 22, 2001, he owed \$13,451.37.

7. Just recently the State Department of Veterans Affairs was appointed as the representative payee for Hiebeler. That means that the monthly pension payments from the federal agency are now being sent to the Department rather than being directly deposited in Hiebeler's account. The state Department has agreed pay Hiebeler's maintenance charge from this point forward, and is willing to have a portion of the difference between the pension check and the maintenance charge be used to pay down the outstanding balance that has accumulated. The amount of money available for this, however, is small in comparison to the amount of the outstanding balance, and it is not a realistic method to resolve this matter.

8. Hiebeler has, for some unspecified time, maintained an account at the Wells Fargo Bank. There are no details available in the record about its balance, its sources of income or its use of funds. Hiebeler has elected, to date, not to provide that

information to the Home or to the state Department. It is unknown, therefore, whether or not the amount of money in the account is sufficient to pay Hiebeler's outstanding balance owing to the Home. As of the day of the hearing on February 28, Hiebeler would not state whether or not he was willing to use the money in the account to pay the outstanding balance, stating only that he would "think about it".

9. Hiebeler has been diagnosed with hypertension, obesity, and schizoid personality disorder. He was declared incompetent by the Federal Department of Veterans Affairs for purposes of appointing a representative payee, but he has never been declared incompetent by a court.

10. At the time when Mr. Hiebeler entered the home, he signed an Admission Agreement detailing how maintenance charges and other fees are calculated and required to be paid. The actual agreement signed by Mr. Hiebeler in 1995 has been lost. However, on January 24, 2001, Mr. Hiebeler signed another admission agreement which is similar to the one he signed back in 1995. The agreement contains various provisions relating to treatment, services provided by the Home, responsibilities of the resident, etc. But, pertinent to this matter, it provides the following:

"Your maintenance charge is calculated according to Minnesota Rules, parts 9050.0500 to 9050.0900, and is based upon your financial ability to contribute to the payment of your cost of care. You must provide accurate financial information to the Home so that your maintenance charge can be currently determined. ...

\* \* \*

You must pay your maintenance charge by the due date. Payment is due by the last day of the month. If you do not pay your maintenance charge by the due date, the Home will notify you that your account is delinquent. In accordance with Minn. Stat. § 334.01, simple interest may be charged by the Home on delinquent accounts. We may discharge you from the Home for not paying your maintenance charge by the due date.

\* \* \*

Your discharge will be according to Minn. Rules parts, 9050.0200 through 9050.0230. These rules explain how a discharge is determined and carried out, and how you can appeal a discharge."

11. On February 19, 1999, the Home issued an initial Notice of Involuntary Discharge to Hiebeler indicating that he had failed to comply with payment obligations and that if he did not take further action, an Order for Discharge would be issued 10 days from receipt of the Notice. The initial Notice went on to outline appeal rights and provided contact information for the Metropolitan Office of Ombudsmen for Older Minnesotans.

12. On February 26, 1999, Hiebeler requested reconsideration of the initial Notice.

13. On June 3, 1999, a reconsideration hearing was held. It was attended by Hiebeler, his social worker Pat Gosz, the Home's financial officer, and Home's administrator.

14. On April 20, 2000, the Home issued its Reconsideration Decision and Discharge Order, informing Hiebeler that the initial Discharge Notice was upheld and that he would be discharged on May 20, 2000. It also informed him of his appeal rights. The apparent reason for the delay between the June 3, 1999 hearing and the April 20, 2000 decision was a change in administrators at the Home.

15. On May 15, 2000, Hiebeler filed a Notice of Appeal of the Involuntary Discharge Order.

16. On January 12, 2001, the administrator signed a Notice of and Order for Hearing, setting a hearing in this matter for February 28, 2001. This was served on Hiebeler on January 24, 2001.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. That Minn. Stat. § 14.50 and 198.03, as well as Minn. Rules, part 9050.0230, give the Administrative Law Judge and the Board authority to conduct this proceeding, to consider the issues raised, and to make Findings, Conclusions and Orders.

2. Mr. Hiebeler received proper notice of the proposed discharge and of the time and place of the hearing in this administrative appeal.

3. The Veterans Home and the Board have complied with all the legal requirements for conducting this proceeding.

4. The Veterans Home's Board rules require veterans homes to institute proceedings to discharge a resident "when an account is delinquent ...". The rule goes on to define an account as delinquent "if a resident willfully refuses or willfully fails to pay the bill by the due date." Finally, the rule provides that:

for purposes of this subpart, "willful refusal or willful failure to pay" means a situation in which:

A. the decision of whether to pay is completely in the control of the resident ....: or

B. a resident .... has the ability or resources to pay the maintenance charge and fails to pay.

5. The Board's rules require the Home to institute proceedings to discharge a resident who "fails or refuses to comply with payment obligations in the admission agreement." Minn. Rule part 9050.0200, subpart 3A.

6. Under Minnesota law, the Veterans Home has the burden of proving that Mr. Hiebeler is delinquent in the payment of his maintenance charges or that he has refused or failed to pay those charges.

7. Mr. Hiebeler has been refusing to pay monthly maintenance charges that he is required to pay under his admission agreement and under the law. He has been unwilling to enter into an agreement for the payment of the arrearages. The Veterans Home may, therefore, bring these proceedings to discharge him.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge respectively RECOMMENDS that the Board AFFIRM the Administrator's Order discharging Mr. Hiebeler for failure to pay his monthly maintenance charges.

Dated this 26<sup>th</sup> day of March, 2001.

---

ALLAN W. KLEIN  
Administrative Law Judge

Reported: Taped.